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NO. 92-306

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

JEROME B. ROSENTHAL,

Petitioner,

vs.

ROBERT NOLAN CONRAD, A LAW CORPORATION, ROBERT NOLAN CONRAD, AND HARLAN N. GREEN, A PROFESSIONAL CORPORATION

(Real Parties In Interest)
Respondents.

PETITIONER'S REPLY

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RESPONDENTS AID TO COURT'S BIAS, PREJUDICE

Respondents (Respts) introduce (p.1) their BRIEF (herein "RB") by referring to petitioner as a "disbarred attorney." The campaign of totally irrelevant vilification of Petitioner continues in their citing five decisions out of the six cases cited in the entire REPLY; the decisions have no bearing whatsoever on any element or phase of Petition. (RB,pp7-8, and fn.1 on p.8). Petitioner notes only (1) the impropriety, (2) the inference that Respts have little of pertinence to say in refuting the Petition, and (3) Conrad (Mann) have cited the same cases throughout the trial and post-judgment proceedings to prejudice and activate the courts against Petitioner, obviously successful. (Petn,p.1 of Exh.F to Append.E) **Conrad/Mann never denied that they thus prejudiced the courts against Petitioner.**

FUNDAMENTAL CONSTITUTIONAL ISSUES PRESENT; RESPONDENTS ARE MISTAKEN

Respondents' statement that Petitioner's "questions presented" are inconsistent with the relief sought...(and) that no constitutional issue is present" is flatly incorrect. (RB p.1). "Questions Presented" are connected with relief sought and constitutional issues, viz., Q1: Due Process (14th) Right to notice and hearing (Petn.,p.1) Q2: Right to effective counsel and self-representation, both under 6th, and as part of due process under 14th Amend. (Petn. pp i-ii) Q3: Due process, right to impartial judiciary as part of due process (Petn. pp.ii-iv) Q4: Right of access to court as part of due process under 14th Amend. (Petn. p. iv). Respondents <u>ignore</u> statements in Petition-that fundamental due process rights of (to) notice and hearing, impartial judiciary, effective counsel, freedom from arbitrary state action, and to federal supremacy, are the very rights to be secured by granting of the writ. (Petn. p.26).

IMPORTANCE OF MATTER(S) IN THIS CASE; NO EFFECTIVE COUNSEL, NO NOTICE OR HEARING

RB p. 1, subpar. 2 states the very two actions, (1) Affirming, on merits, the judgment, with substantial sanctions imposed on Petitioner and his counsel (App.B, esp. pp.45-49) and (2) Granting sanctions against Petitioner and counsel for Frivolous Writ Petition, etc. (App. C, esp. pp. 1-16) of the Court of Appeal which constitute, in the main, the factual and legal bases for the "Questions Presented" (Petition, pp. i-iv, and supra) and "Reasons..." (Petn. pp. 20-26) (Please correct year of Ex Parte Clarke from 1984 to 1894, in last paragraph on p. 21).

RB's tenor and scattered challenges prompt these illustrations of some contentions of Petition, rebutting RB unsupported erroneous assertions. For example - on the critical issue of deprivation of right to counsel (or to self-representation) Regardie (Petitioner's "lead" counsel) was, by his own sworn

statement "no longer able to continue [his] my representation of...ROSENTHAL (Petn'r)", "I (Regardie) am no longer able to effectively communicate with him",... and "the net effect is that I cannot represent Mr. Rosenthal any further." (Emphasis added) (July 1, 1991 Regardie's sworn "Declaration in Support of Withdrawal Motion-not opposed by Petitioner.)

ACTIONS OF APPELLATE COURT,OF RESPONDENTS,AND OF REGARDIE DEPRIVE PETITIONER OF ALL OF THOSE DUE PROCESS RIGHTS; APPEAL DECISIONS (APP.B,C) ARE NULLITIES AS IN VIOLATION OF CCP286.

The trial court order of August 9, 1991 relieved Regardie for all purposes, and specified the addresses (office and jail).

Thus, Regardie was not Petitioner's attorney since May, July or August 9, 1991. Mr. Klein, co-counsel, died suicidally, September 23, 1991.

Significantly, Petnr's two leading "enemies" (infra), Regardie and Mann

(shockingly, as well as the court of appeal) ignored the very existence of, and the mandatory nature of Cal.Code of Civil Proc. (CCP Sect. 286: "When an attorney dies..., a party to an action, for whom he was acting as attorney, must, before any further proceedings are had against him, be required by adverse party (RESPTS), by written notice to appoint another attorney or to appear in person." (Emph. Added) Here neither RESPTS NOR Regardie gave any notice - and neither did the Court of Appeal - to Petnr that oral argument was scheduled for December 4, 1991. All three, the Court, Respts and Regardie participated without Petitioner's knowledge, opportunity to participate, or have legal representation.

Regardie filed substantially the SAME withdrawal Motion to the Court of Appeal August 20, 1991 (App.E, with EXHS A thereto, esp. EXH.B, p.2) stating that during Regardie's only visit to Petitioner at the

Jail throughout the 1-1/2 years, as of October 8, 1992, of Petnr's incarceration which took place in early May, 1991, Regardie told Petn'r that he could no longer represent him.

Thus the Court of Appeal and Regardie were fully informed of Regardie's termination **and** of the addresses to which to send **notices** to Petn'r (office and jail) (Append.E, p.3, and attached PETNR'S OPPOSITION) showing Petn'r Rosenthal's Pro Per (self-representation) status and his correct addresses for notices since August 1991.

No notice of the oral arguments/hearings of Dec. 4, 1991 (Court of Appeal) to Petn'r at either address, by Regardie **OR** by Court of Appeal or by Respts. (Cal.CCP Sect. 286, supra). Neither was any notice or copy of the combined two decisions Feb. 6, 1992 sent to Petn'r - until **after** he heard by **rumor** that the two appellate matters had been decided against him. The Court of Appeal also **ignored** Petnr's "Response" Append., with Exhs. A thru

H - same case nos., same Court of Appeal file, notwithstanding.

Thus, this incredible scenario existed at time of the **only** hearing on the Appeal from Judgment (in life-long significant case) and on the sanctions for alleging "frivolous writ(s) applications (seeking Petnr's liberty). Petn'r had **no notice**. "Wasn't **there**", wasn't represented at all, or in "meaningful way." Petitioner had no counsel, was prevented from representing himself, had no impartial tribunal, and was denied access to Court. The only lawyers there were Petnrs two serious enemies and adversaries, i.e. Regardie, whom Petn'r denounced as ineffective and dishonest **in this case**, and Mann (Respt's counsel) who is and has been Petitioner's years-long and bitter adversary, whom Petn'r has accused of frauds on courts. Without his presence or participation, Petn'r had no opportunity to advise Court of Appeal of its own errors in statements of fact; which that

Court made without any reference to record, e.g. transcript of Comm. Taylor's remarks at debtor examination.

RIGHT TO COUNSEL APPLIES IN CIVIL CONTEMPT, AS WELL AS CRIMINAL.

Opposite to Respt's contention (RB,p.5,Par.2) Petn'r did/does have the right to counsel in the civil case, particularly about incarceration and release efforts (writ petitions). The right to counsel "as an aspect of due process turns not on whether a proceeding may be...'criminal' or 'civil', but on whether the proceeding may result in a deprivation of liberty." Walker v McLain (1985) 768 Fed.2d 1181, 1183; Lassiter v Dept. of Soc.Services (1981) 452 U.S. 18,25.

TRIAL AND APPELLATE COURTS ARE MISLED BY RESPONDENTS; EXAMPLES

Respts' statements (RB p.1,par.3 - p.2) are incomplete and misleading. Petn'r was not

"ordered to answer." In fact, Commissioner Taylor **refused** to make **any** "order"; if he had made any order it would have been void and a nullity, **since it was neither in writing nor entered in the minutes of the Court - as specifically required by applicable law.** Respts' counsel has never once met Petn'r oft-repeated challenge to produce any such "order." Moreover, Comm.Taylor **stated** (he did not "order") that whenever he objected to a question, e.g. on self-incrimination grounds, Petn'r should state and explain his objection. **That is exactly what Petn'r did in every instance**. Respts. have never proved and cannot prove the contrary; accord: Federal rule and standard controlling Article VI Fed. Supremacy, U.S. Constitution).

Also incomplete and thus misleading: statement that for "refusing" to answer the judgment debtor questions, "Petitioner was adjudged in contempt and sentenced to jail." The undisputed truth: Judge O'Neil (and **not**

the Commissioner) found Petitioner in contempt - for violating (by refusing to answer) an "order" that never existed, i.e. the "order" that Comm. Taylor did not make - and which, if, arguendo, made- was legally void (supra).

Also, incomplete and misleading, or misleading: Respts' statement that on review, the "contempt order" was "upheld", by California Court of Appeal and California Supreme Court. RB, p. 2,par.4. The truth: Both Courts summarily denied the petitions for writs, i.e., there was no consideration or decision on the merits - the opposite of "upholding".

Another misleading statement: that "Petitions for...writs filed by Petitioner (RB p.2, par.4) - Petitioner himself did not file the petitions. Respts' attorney is utilizing the entrenched usage device of referring to parties as having taken action, filed pleadings, etc. when those actions were in fact engaged in by party's counsel. The due

process issues, here requires that the Court know the actual fact.

Respts' statement that "...Respondents were invited by the California Supreme Court to apply for additional sanctions from the California Court of Appeal..." (RB. p.2,par.4) also hides the significant truth. Respts' counsel, Mr. Mann's filings in the Calif.Supreme Court falsely stated that Petitioner "stipulated to such judicial officer (Comm.Barry Taylor) hearing the matter on not one but two occasions..." Mann's statement is false, since Petitioner (himself or through his then attorneys) never did so stipulate. Petnr's then counsel prepared REPLY OF PETITIONER TO OPPOSITION OF REAL PARTY (CONRAD, BY MANN) TO...(PETNR'S) PETITION FOR REVIEW OF CONTEMPT ORDER IN CAL.SUPREME COURT (APP.F, EXH.F, pp.2-4) exposing Mann's falsehood. BUT, THAT REPLY OF PETITIONER...was never filed, because "too late", due to Regardie/Klein delay. (See

Append.F, in particular p. 7 of DECLARATION OF...ROSENTHAL, which follows p. 28 of ROSENTHAL'S RESPONSE... filed in the Cal.Court of Appeal, Sept.7,1991). Thus the Cal.Supreme Court did not know of Mann's determinative falsehood, (Commissioner has no jurisdiction without a stipulation that he may act as judge - a stipulation that was never made here - and consequently "invited" Mann to "apply for additional sanctions." (RB,p.2,par.A)

THE EVILS OF DENIALS OF DUE PROCESS

Significantly (further demonstrating its bias/prejudice against Petn'r), the Cal.Court of Appeal did know of the falsehood (supra), ignored it - and granted the additional sanctions anyhow, Feb. 1992 (App.B and C), following its Dec.4, 1991 hearing. Such disregard for the unquestionable falsehood of Mann - is another example of the evils and injustices arising from denial of the very due process guarantees of notice, hearing, of

right to counsel, access to Courts, and to an impartial (free of bias, prejudice) judiciary with which the instant Petition is concerned.

CORRECTING DRAFTING ERROR IN PETITION

Respts correctly point out (RB p.2) the awkward and confusing sentence of Petition, i.e. p.25. To clarify (and save time and space), Petitioner respectfully requests deletion of the sentence beginning "Petitioner does not seek determination on the facts" and ending "writ-generated sanctions." The portion of the Petition that follows that sentence (pp.25,26 of Petition) further clarify.

PETITIONER'S COMPLIANCE WITH RULE 10, RULES OF THIS COURT.

Respt's truncation, of Rule 10 (RB, p. 3, A,(1),(2),(3), (4) does violence to Rule's true meaning. The preamble (Rule 10, par.1), omitted by Respts, provides infinitely more

and broader reasons considered by this Court in the exercise of its discretion.

Petition and this Reply obviously, in many respects, bring this matter within the parameters of the Court's discretion.

PETITIONER HAS DEMONSTRATED, INTER ALIA, THAT HIS DUE PROCESS RIGHTS HAVE BEEN VIOLATED

Contrary to Respts' contention (RB p.3,par.B) Petitioner (in Petition and its Appendices, and in this Reply) certainly demonstrated that denial of his notice and the right to a hearing. That "Petitioner, through his Counsel, had notice of the argument before the Cal.Court of Appeal (and argued on Petitioner's behalf)" (RB,p.3,par.B (1)) is sheer sophistry. Petitioner had no such notice. Another example of the bias and prejudice of the Court of Appeal; Although fully informed that: (1) Regardie no longer represented Petitioner, (2) Petitioner was in Pro Per, (3) in jail, (4) Klein was dead

(Suicide September 23, 1991), the Court of Appeal neither notified Petitioner, nor required Regardie to do so. Further, both that Court and Respts violated their mandatory statutory obligations to notify Petitioner, in writing, to **appoint another attorney**, or to appear in person "before any further proceedings...". **Cal.CCP Sec. 286**, **supra**. That Court, and Petnr's enemies (Regardie and Mann) blithely staged an "argument, while Petitioner, whose liberty, property interests, statutory and constitutional rights were at stake, remained in jail without notice or knowledge of the argument! Contentions of Respts (RB pp.3-4, para.B (2)(3), C) are infirm, conclusionary: No reference to record and no supporting facts.

To **refute** Respts' assertion that state Appellate decisions (RB p.4,par.c) were not based on animosity toward Petn'r. Here are these examples: (1) "THE (APPELLATE) COURT'S MOST TELLING FACT BLUNDER; AND ERRORS OF LAW"

(App.K,pp.9 (bottom)-p.13 (thru 5th line) (2) Court of Appeal's denial of Petnr's petition for rehearing filed within days after Petnr learned by rumor that "appeals" were decided against him in his absence on Feb.6,1992, (3) Holding Regardie's Motion to Withdraw as Petnr's attorney for about six months (Aug. '91 to Feb.92) before granting although Regardie and Petn'r agreed, and Regardie stated he would not, did not and could not represent Petnr after May, 1991, and although he was released of representing Petn'r for all purposes, on Aug. 6 and 10, 1991. Result: No representation at all for Petn'r - a critical oral argument Dec.4, '91 and opinions Feb.6,1992 (Appeal E,F and D); (4) Ct. of Appeal's shocking untruth "After a duly noticed hearing..." (Emp. added, Append.C, p.3), (5) other Court of Appeal actions referred to in Petition, etc. Appendices and Exhibits, and this Reply, e.g., that Court's joining Respts in vilifying Petn'r by

reference to irrelevant and prejudicial decisions, some its own. (Append. B).

PETITIONER DOES NOT REPEAT RESPONSIVE MATTER.

Petition and this Reply have responded, in the main, to RB's earlier portions, i.e., to p. 5 of RB. Because the remainder of RB repeats, in extended form, the content of its earlier portions, Petn'r refrains from repeatedly responding to the portion following p. 5 starting with RESTATEMENT OF THE CASE.

VIEWED EMPIRICALLY, ONLY BY ABJECT DENIAL OF FUNDAMENTAL AND DUE PROCESS RIGHTS, COULD COURT OF APPEAL REACHED INCREDIBLY UNJUST, UNLAWFUL RESULTS.

In the circumstances (see "PRELIMINARY AND SUMMARY", Append. K,pp.1-7) only by deprivations and denials of the due process bundle of rights could Cal.Court of Appeal have reached its shockingly unjust dispositions in its decisions/opinions of Feb. 6, 1992 (Append B & C. It did so; even the Petition for Rehearing was denied! Only

severe bias and prejudice of that Court against Petitioner (fanned by Respts.) could have made possible such an injustice and travesty on due process and associated rights.

CONCLUSION

As stated, Respondents' repeated resort to vilification of Petitioner (shockingly joined by Cal.Court of Appeal) is not to be tolerated in the system of justice espoused and retained by this Court.

That attack, coupled with errors and appalling distortions of substantive and procedural history in this case, cries out for this Court's relief. The veritable catalogue of denials and Respondents' misrepresentations combine to reach proportions of universal concern. This Court's rectifying action is, with all due respect, the last haven in a storm of outrageous injustice. Such a result - a triumph of chicanery and lawlessness over substantial justice - must never happen again.

For the foregoing reasons, and the reasons

stated in the main text of this Reply, and the reasons and matters set forth in the Petition, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

DATED: September 30, 1992.

Respectfully submitted,

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